

If a child is in protective custody or the petitioner requests out of home placement of the child, a preliminary hearing must be conducted. The court makes two major decisions at a preliminary hearing: whether to authorize the filing of the petition, and if so, whether to order pretrial placement of the child.

PROCEDURAL ISSUES

- ☐ Must hold hearing within 24 hours of removal (except Sundays and holidays).
- ☐ Was legally sufficient notice given to the parties?
- ☐ Appoint counsel for child and parent(s).
- ☐ If there is only one respondent parent, what is status of other parent? Has the agency located/engaged the other parent?
- ☐ If a parent is in prison, can he or she participate in person or via telephone/video conference?
- ☐ Is the child present in court? If not, why?
- ☐ Inquire if the child is an Indian child. See the ICWA/MIFPA bench card.
- ☐ Advise parties of rights.

OUT OF HOME PLACEMENT STANDARDS [MCL 712A.13A\(9\)](#)

The court may place a child into foster care if it finds **all** of the following conditions:

- ☐ Substantial risk of harm to the child's life, physical health, or mental well-being.
- ☐ No service or other arrangement is reasonably available to adequately safeguard the child from the substantial risk of harm.
- ☐ Continuing child's residence in the home is contrary to the child's welfare.
- ☐ Reasonable efforts were made to prevent/eliminate the need for removal.
- ☐ Conditions away from the parent are adequate to safeguard the child's health and welfare.
- ☐ If Indian child, must find *clear and convincing evidence*, based on qualified expert witness testimony, that the child would be at risk of serious physical or emotional damage unless removed.
[MCL 712B.15](#)

CONTRARY TO THE WELFARE TO REMAIN IN THE HOME

State law and federal funding regulations require this finding to be made in the first court order authorizing removal.

- ☐ Is it contrary to the child's welfare to remain in the home?
- ☐ What specific condition(s) makes the home an unsafe place for the child, requiring removal?
- ☐ Is the parent intellectually, emotionally, and physically able to protect the child given the threats?
- ☐ What prevents the child from remaining/returning home today?
- ☐ Can the caregiver articulate a feasible and realistic plan to protect the child?
- ☐ Does the caregiver believe the child's report of maltreatment and is he or she supportive of the child?

REASONABLE EFFORTS TO PREVENT REMOVAL

State law and federal funding regulations require this finding to be made within 60 days of removing the child from the home. Best practice promotes the court making this finding in the first court order authorizing removal of the child.

- ☐ Has the agency provided reasonable efforts to prevent the child's removal from the home?
 - Reasonable efforts are not required if aggravated circumstances exist. [MCR 3.965\(D\)\(2\)](#).
- ☐ Were the efforts culturally sensitive and culturally competent?
- ☐ What services could be provided to maintain the child safely in the home?
- ☐ If the child is an Indian child, has the agency provided *active efforts* to maintain the child in the home? (See [MCL 712B.3](#) for definition of "active efforts".)

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PARENTING TIME

The court should order parenting time and sibling visitation in a frequency and duration appropriate to maintain the parent-child and/or sibling bond. Parenting time should not be used as a punishment for noncompliance with the case service plan.

- ☐ Is the parenting time plan clearly defined in the order, including possible electronic contact (email, phone, etc.)?
- ☐ Does the parenting time plan incorporate continued parental responsibilities such as attendance at appointments, school events, and/or extracurricular activities?
- ☐ Is parenting time at a location other than the agency appropriate?
- ☐ If supervised parenting time is requested, what are the safety risks preventing unsupervised parenting time?

PLACEMENT AND PERMANENCY

- ☐ Have the non-custodial parent, putative father, or other relatives (paternal and maternal) been identified and considered for placement? What efforts have been made to locate and engage them?
- ☐ If there is a putative father has he been advised of his right to establish legal paternity?
- ☐ Does the child have siblings who are already in foster care? If so, can the children be placed together? If the children cannot be placed together, is there a plan for sibling visitation?
- ☐ Does the child's placement allow the child to maintain school placement and other important family and social connections?
- ☐ If the child is an Indian child, is the child placed in compliance with ICWA/MIFPA placement preferences?

EDUCATIONAL WELL-BEING

- ☐ Is the child currently enrolled in school or a preschool program?
- ☐ Is the child eligible for special education services? Is the child receiving any services to address the identified needs?
- ☐ Does the child have any physical/mental health issues that impact the ability to attend school regularly?
- ☐ Is the child involved in any extracurricular activities? If so, are there resources available for the child to continue?

Academic Achievement

- ☐ Is the child currently reading/performing at grade level? If not, what is being done to address this?
- ☐ Is the child eligible for special education services? Is the child receiving services to address the identified needs?
- ☐ How many days of school has the child missed this year? Reason for absences?
- ☐ Has the child been subjected to disciplinary action at school? If so, why?
- ☐ Does the child have necessary clothing, supplies, and materials needed for school?
- ☐ Are the parents engaged in promoting the child's academic achievement? (e.g. conferences, homework, etc.)



REQUIRED JUDICIAL FINDINGS / ORDERS

- ☐ Determine if there are statutory grounds to authorize the petition (probable cause that 1 or more of the allegations in the petition are true).
- ☐ Determine if the child should be placed in foster care pending trial:
 - Out of home placement standards are met (see page 1).
 - Place child with DHS for care and supervision.
 - Order parenting time.
 - Order specific evaluation/services to be provided to parent(s) and child.
- ☐ Specify the reasonable efforts that were made to prevent removal.
- ☐ Schedule next hearing.